to be applied for the purposes of the common agricultural policy, that is, at the rate of exchange corresponding to the par value communicated to and recognized by the International Monetary Fund.

In Joined Cases 38 and 39/71,

Reference to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven for a preliminary ruling in the action pending before that court between

(1) WESTZUCKER GMBH, Dortmund (Case 38/71),

(2) FRITZ DIETZ, representing Gebrüder Dietz, Frankfurt am Main (Case 39/71),

and

HOOFDPRODUKTSCHAP VOOR AKKERBOUWPRODUKTEN, The Hague, representing the Netherlands Minister for Agriculture and Fisheries,

on the interpretation, in particular:

— of Article 5(2)(e) and (f), the first indent of Article 9(1)(a), Article 9(3)(a) and Article 10(2)(c) of Regulation (EEC) No 1987/69 of the Commission of 8 October 1969 laying down detailed rules concerning the sale by tender of sugar by intervention agencies (OJ No L 253, p. 7, English Special Edition 1969 (II), p. 424);

— of Article 11(1)(a) of Regulation (EEC) No 2061/69 of the Commission of 20 October 1969 laying down detailed rules on the denaturing of sugar for animal feed (JO L 263, p. 19),

THE COURT

composed of: R. Lecourt, President, H. Kutscher (Rapporteur), President of Chamber, A. M. Donner, A. Trabucchi and R. Monaco, Judges,

Advocate-General: A. Dutheillet de Lamothe
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Provisions applying during the periods in question

The provisions applying during the period in question were primarily as follows:

1. Measures taken on sugar

Basic Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar (OJ No 308, p. 1, English Special Edition 1967, p. 304) sets out in the second recital in the preamble the initial concept that 'denaturing premiums for sugar rendered unfit for human consumption' may help 'to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers of sugar beet and sugar cane'.

As a result, Article 9(2) of the regulation provides that intervention agencies—to be designated by the Member States and required to buy the sugar offered to them at the intervention price (Article 9(1))—may grant such premiums. Under the terms of paragraphs (7) and (8) respectively of the same article, the Council 'shall determine: general rules for the application of the above paragraphs', while 'Detailed rules for the application of this article' and in particular 'conditions for granting denaturing premiums and the amount of such premiums' shall be adopted 'in accordance with the procedure laid down in Article 40', that is, in principle, by the Commission acting on the opinion of the Management Committee.

In pursuance of Regulation No 1009/67 the Council on 9 April 1968 adopted *Regulation (EEC) No 447/68* laying down general rules for intervention buying of sugar (OJ L 91, p. 5, English Special Edition 1968(I), p. 76).

On 8 October 1969 the Commission adopted *Regulation (EEC) No 1987/69* which is based upon Regulation No 1009/67 and the interpretation of which is sought by the national court. Article 1(1) thereof 'lays down detailed rules for the sale by tender of sugar bought in by intervention agencies'.

Still in pursuance of Regulation No 1009/67, on 17 October 1969 the Council adopted *Regulation (EEC) No 2049/69* laying down general rules on the denaturing of sugar for animal feed (OJ L 263, p. 1, English Special Edition 1969 (II), p. 441).

In pursuance of Regulation No 1009/67 and taking into consideration Regulation No 2049/69, the Commission on 20 October 1969 adopted *Regulation (EEC) No 2061/69* laying down detailed rules on the denaturing of sugar for animal feed, the interpretation of which is also sought by the national court.

On 25 November 1969 the Council adopted *Regulation (EEC) No 2334/69* on the financing of intervention expenditure on the internal market in sugar (JO L 298, p. 1). This regulation is based on or follows mainly Regulation No 17/64/EEC (see below under 2) and Regulation No 1009/67.

On 4 May 1970, the Commission adopted *Regulation (EEC) No 822/70* concerning a standing call for tender for the sale of white sugar intended for animal feed and held by the German intervention agency (JO L 98, p. 7). This text is based on or follows mainly Regulations Nos 1009/67, 447/68, 1987/69 and 2334/69.

In Official Journal No C 54 of 6 May 1970 at page 2 the Commission published a Notice of a standing call for tender from the Einfuhr- und Vorratsstelle für Zucker (EVSt-Z) for the sale of white sugar from its stocks and intended for animal feed (*Notice No 3/1970*). A series of Commission Decisions fixed — each time in units of account — the maximum amount of the denaturing premium for the various partial invitations to tender awarded within the scheme of the standing call for tender

referred to in Regulation No 822/70 (cf. in particular *Decision of 20 May 1970*, JO L 126, p. 26; *Decision of 3 June 1970*, JO L 131, p. 19; *Decision of 10 June 1970*, JO L 138, p. 22).

2. General measures

'In order to enable the common organization of agricultural markets to attain its objectives' *Regulation No 25 of the Council* of 4 April 1962 on the financing of the common agricultural policy (OJ of 20.4. 1962, p. 991, English Special Edition 1959–1962, p. 126), set up 'a European Agricultural Guidance and Guarantee Fund', hereinafter referred to as the 'Fund' (Article 1).The purpose of this Fund is, *inter alia*, to finance intervention aimed at stabilizing markets (Article 2(2)(b)). Under the terms of Article 3(1)(b) 'intervention on the domestic market' shall in particular be eligible for aid from the Fund.
On 23 October 1962 the Council adopted *Regulation No 129* on the value of the unit of account and the rates of exchange to be applied for the purposes of the common agricultural policy (OJ of 30.10.1962, p. 2553, English Special Edition, 1962, p. 274).
On 5 February 1964 the Council adopted *Regulation No 17/64/EEC* on the conditions for granting aid from the European Agricultural Guidance and Guarantee Fund (OJ of 27.2.1964, p. 586, English Special Edition 1963–1964, p. 103). Article 5(1) of this regulation defines the phrase 'intervention on the domestic market', as it is used in particular in Regulation No 25.
On the same date the Council adopted the *Financial Regulation concerning the European Agricultural Guidance and Guarantee Fund* (JO of 27.2.1964, p. 599).

II — Facts and procedure

The facts and procedure may be summarized as follows:

(1) In May and June 1971 the Dietz and Westzucker undertakings respectively submitted several tenders within the context of the standing call for tender provided for in Notice No 3/1970 and indicated the Netherlands as the Member State in which the sugar would be denatured. The Einfuhr- und Vorratsstelle für Zucker, the German intervention agency, subsequently sent these two undertakings 'statements of award of tender' for total quantities of 3 000 metric tons (Westzucker) and 27 425 metric tons (Dietz) at a selling price previously fixed by Regulation No 822/70 (21.73 u.a. per 100 kg) and providing for a denaturing premium offered by the undertakings for the various individual quantities.

(2) At the request of the two undertakings involved the Hoofdproduktschap voor Akkerbouwprodukten (hereinafter referred to as 'the Hoofdproduktschap') issued to Westzucker on 12 and 23 June 1970 and to Dietz on 4 June 1970 denaturing premium certificates in respect of 3 000 metric tons (Westzucker) and 25 000 metric tons (Dietz). Each of these certificates showed the amount of the denaturing premium for 100 kg in u.a. and, in brackets, in guilders.
As these undertakings lodged a complaint on the ground that these amounts were not expressed in Deutschmarks, the Hoofdproduktschap decided that the amount in Deutschmarks referred to in the statements of award of tender was deemed to be shown on the certificates in question but that the premium could not be paid in that currency. On 14 August 1970 the two undertakings appealed against this decision to the College van Beroep voor het Bedrijfsleven and sought in particular:

— the annulment of the decision;

— a ruling that they must be issued with denaturing premium certificates on which the amount of the premiums was expressed solely in Deutschmarks and was equal to the amount of the premium set out in the tenders which the undertakings had submitted.

(3) By judgments of 6 July 1971 the College van Beroep voor het Bedrijfsleven decided, in each of these cases, to refer the following questions to the Court:

'1. Does the correct interpretation of Article 5(2)(e) and (f), the first indent of Article 9(1)(a), Article 9(3)(a) and Article 10(2)(c) of Regulation (EEC) No 1987/69 of the Commission and, in addition, Article 11(1)(a) of Regulation (EEC) No 2061/69 of the Commission, taken together with Article 2(1) of Regulation No 129 of the Council, Article 5 of Regulation No 17/64/EEC of the Council and Article 2(c) of Regulation (EEC) No 2334/69 of the Council, imply that where sugar is denatured in a Member State other than that in which the tender was submitted and the award made, the denaturing premium shown in the denaturing premium certificate issued by the former Member State must be expressed solely in the currency of the Member State in which the tender was submitted and the award made?

2. Also, must the provisions referred to the first question be understood to mean that, where the denaturing takes place in a Member State other than that in which the tender was submitted and the award made, the issue of the denaturing premium certificate by the Member State confers on the successful tenderer the right to choose, for the purpose of payment of the premium, between the Member State in which denaturing takes place and that in which the tender is submitted and the award made?

3. Or does the issue of a denaturing premium certificate by the Member State in which denaturing has taken place after the tender has been submitted and the award made in another Member State confer an exclusive right the payment of the premium by the first Member State?

4. Should an affirmative answer be given to Question 3, must the provisions referred to in Question 1 be interpreted to mean that the Member State in which denaturing has taken place shall be obliged to pay the denaturing premium in the currency of the Member State in which the tender was submitted and the award made?

5. Or does a correct interpretation of these provisions imply that the denaturing premium must be paid in the currency of the Member State in which denaturing has taken place?

6. If the preceding question must receive an affirmative answer, must the premium be paid in this currency after conversion of the amount referred to in the statement of award of the tender in the other Member State at the rate of exchange applicable for the purposes of the common agricultural policy or after conversion of this amount at the daily rate?'

The national court states, *inter alia*, that the contested decisions were taken in pursuance of the Suikerbeschikking 1968-II, a Netherlands decree which came into force on 1 November 1968 and which provides, in Article 9, for the grant of a premium for the denaturing of sugar for animal feed which 'shall be equal to that which must be accorded by way of the premium provided for in Article 9(2) of Regulation No 1009/67/EEC, converted if necessary into Netherlands currency ...'.

(4) The judgments containing the order for reference were received at the Court Registry on 7 July 1971. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC the parties to the main action, the Government of the Kingdom of the Netherlands and the Commission of the European Communities submitted written observations.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided not to hold any preparatory inquiry.

The parties to the main action and the Commission presented oral argument at the hearing on 23 November 1971.

The Westzucker and Dietz undertakings were represented by A. E. Driessen, of the Rotterdam Bar, the Hoofdproduktschap by A. W. F. Helenstrijd, the Government

of the Kingdom of the Netherlands by E. L. C. Schiff, Secretary-General at the Netherlands Ministry for Foreign Affairs and the Commission of the European Communities by its Legal Adviser, J. H. J. Bourgeois.
The Advocate-General delivered his opinion at the hearing on 15 December 1971.

III — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice may be summarized as follows:

1. The first question

Westzucker and Dietz and the *Hoofdproduktschap* submit a series of arguments, numerous elements of which may be regarded as referring both to the first and to the fourth, fifth and sixth questions (see 3 below). The Hoofdproduktschap considers that a negative answer must be given to the first question.
The *Netherlands Government* expresses no opinion on the first question.
The *Commission* considers that a negative reply must be given to this question.
Regulations Nos 1987/69 and 2061/69 are silent as to the currency to be used in the denaturing premium certificate in order to express the amount of such premium, whether the certificate be issued by the State inviting the tender or by that in which the denaturing process is carried out. In the circumstances it has to be accepted that it is for the Member States to settle this question as they think fit. It is reasonable to assume that in doing so each State uses its national currency. Moreover, an obligation on a Member State to express such amounts in an official document in a foreign currency constitutes a serious disregard for the currency legislation in force.
At all events, the so-called 'horizontal' Community regulations, that is, those concerning the common agricultural policy in general, cannot justify the view that the denaturing premium, granted in the currency of one Member State, must be expressed in the same currency by a different Member State in which denaturing takes place. Rather is the contrary true:

— The denaturing of sugar constitutes an intervention on the domestic market within the meaning of Article 5(1) of Regulation No 17/64, as is confirmed by Article 1 of Regulation No 2334/69. Its purpose is to withdraw from the market those quantities of the product which exceed its power of absorption on condition that they be assured of an outlet on the internal market of the Community for purposes other than human consumption, that is, as animal feed. The term 'market' must be understood here to mean the Community market which was unified as regards sugar by Regulation No 1009/67. The premium granted on the award of the tender cannot therefore be regarded as a national contribution in favour of the market in the State awarding the tender in particular as the surpluses existing in one geographical area of the Community normally affect the level of prices throughout the Community as a whole. It is, moreover, for this reason that the Community bears all the financial burdens of denaturing (Article 2(c) of Regulation No 2334/69; Article 2(2)(b) and Article 3(1)(b) of Regulation No 25).

— Further, Article 2(1) of Regulation No 129 does not provide an affirmative answer to this question. This provision merely fixes the rate of exchange to be applied when conversion is necessary within the framework of the implementation of the common agricultural policy. On the other hand, it does not settle the question of the cases in which a conversion must be made.

2. The second and third questions

Westzucker and Dietz consider that in the absence of any provisions indicating who

is liable to pay the premium there is nothing to prevent a certificate issued in the Netherlands from being honoured by the German intervention agency, in which case payment would certainly be made in German currency. Moreover, the place of payment is irrelevant as the premiums paid may be reclaimed from the Fund.

The *Hoofdproduktschap* considers that a negative answer must be given to the second question and an affirmative answer to the third.

Only in the special situation provided for in the second subparagraph of Article 6(1) of Regulation No 2049/69—which does not exist in this instance—can the party concerned have the choice between payment by the State awarding the tender and payment by the State in which denaturing takes place.

The *Netherlands Government* is of the same opinion. The second subparagraph of Article 6(1) of Regulation No 2049/69 merely contains an authorization granted to the Member States (cf. Article 16 of Regulation No 2061/69) of which neither the Netherlands nor Germany has made use. On the other hand, the final sentence of paragraph (2) of that article shows not only that denaturing must take place within the State which has issued the premium certificate, but also that it is only in that State that the premium may be paid.

The *Commission* maintains that at the time in question it was normally for the State in which denaturing took place to grant the premium (first subparagraph of Article 6(1) of Regulation No 2049/69). The exception provided for in the second subparagraph of the same paragraph (grant by the State from which the sugar comes) only sanctioned a power on the part of such State (cf. ninth recital in the preamble to that regulation; Article 16 of Regulation No 2061/69) which Germany did not exercise in respect of the quantities of sugar involved in this case. In the absence of any express rules it has to be accepted that the premium is paid by the State by which it has been granted and which has issued the certificate. In fact, the deposit provided for in Article 6(3) of Regulation No 2049/69 must be lodged with that State. Generally, it is also that State which repays the deposit or declares it forfeit. Moreover, Article 20(2) of Regulation No 2061/69 provides for inspection measures to be taken before payment of the premium by the State from which the sugar comes where such State has exercised the power referred to above. This provision is inexplicable if the premium could be paid by a State other than that which granted it and issued the certificate.

3. The fourth, fifth and sixth questions

Westzucker and Dietz maintain that it follows from Article 9(1)(a) and (3)(a) of Regulation No 1987/69 that the award of the tender gives rise to a right to the issue of the certificate showing the premium set out in the tender. Moreover, the denaturing process is governed by a Community system which is intended to regulate a market, when the sugar produced on that market exceeds its capacity to absorb this product. Article 5 of Regulation No 17/64 uses the term 'domestic market' to refer to the Community market and 'market' to refer to the market of one of the Member States. In this instance the market in question is the German market as it is from this that a quantity of sugar was to be taken.

The costs of regulating the market, *in casu* the denaturing premiums, are borne by the Fund (cf. for example, Article 2(c) of Regulation No 2334/69). In this instance the German intervention agency awarded Westzucker and Dietz denaturing premiums expressed in Deutschmarks. It is these premiums which are 'eligible for aid from the Fund' within the meaning of the abovementioned provision. It is not clear why repayment of the premium paid by the Netherlands agency may not be requested from the Fund in Netherlands currency, as no relevant Community provision provides for conversion into another currency. The Netherlands regulations (Suikerbeschikking 1968-II), referred to in this respect by the Hoofdproduktschap, are irrelevant in this instance, as the rights and obligations of the parties derive directly from the Community rules. It is illogical to provide, in favour of the parties, for a right to the issue of a premium

certificate showing the premium set out in the tender, while at the same time refusing them the right to payment of the premium thus defined. In this instance the parties received in Deutschmarks a considerably lower sum than that indicated in the tender. If the arguments set out here were not accepted the effect would be either that the undertakings would no longer carry out the denaturing in a country other than that in which the tender was awarded, or that they would offer higher premiums. The result of this would be to endanger the development of the present denaturing system, as the undertakings concerned would no longer be in a position to choose the most favourable area for denaturing to take place.

It has become clear during recent months that the conversion of one currency into another by means of the unit of account produces results which differ considerably from those obtained when conversion is carried out on the basis of the normal market rates. The official EEC rate may therefore not be used for commercial transactions in which individuals are involved in the absence of express provisions to the contrary. The consequence of recourse to the unit of account is that the Fund is debited with a sum lower than that of the premium awarded to Westzucker and Dietz.

The *Hoofdproduktschap* maintains that a negative answer must be given to the fourth and an affirmative answer to the fifth question; as regards the sixth question an answer must be in the terms of the first alternative.

It is impossible to interpret the Suikerbeschikking 1968-II to mean anything other than that the maximum amount of the denaturing premium fixed by the Community in units of account and the amounts which are calculated on the basis thereof are converted into and paid in Netherlands currency, where the certificate is issued by the Netherlands authorities. In the absence of any single monetary system for all the Member States such a method of conversion is in accordance with the system of Community law concerning transactions carried out within the framework of the common agricultural policy, including the invitations to tender which have to be taken into consideration in this instance and the measures which derive therefrom.

It is true that as a matter of convenience head III(2)(e) of Notice of invitation to tender No 3/1970 specified that the tenderers should express in German currency the amount of the premium which they wished to obtain. However, it is necessary to consider this provision in the light of the note at the foot of the page indicating how the currencies of the other Member States — where nationals of these States took part in the tender — were to be converted into German currency. In addition, this note reminded the German tenderers that, also as regards the Deutschmark, the fixed parities established between the monetary units of the Member States by means of the unit of account would if necessary be applied. When all the tenders were submitted a ceiling was fixed for the premium in units of account. For this purpose, as was shown by Table A annexed to the statement of the Hoofdproduktschap, the premiums proposed in 'national currency' were converted into units of account in accordance with a scale as mentioned above. In this instance the ceiling was fixed at 12·997 u.a. (Commission Decision of 20 May 1970) and on this basis the undertakings in question were awarded certain quantities of sugar, to the extent to which the denaturing premiums which they proposed did not exceed this ceiling.

After having been fixed by the Commission the maximum premium must be recalculated in the national currency according to the same conversion scale. In this way all the tenderers obtain, either in their national currency or in that of another Member State, a comprehensive picture of their financial situation and of the risks they undertake when they carry out the denaturing process in a Member State other than that in which the tender is awarded. As, therefore, in practice the tender is awarded in units of account it follows from Article 2 of Regulation No 129 that the premium may only be paid in the currency of the State in which denaturing takes place, if necessary, after conversion accord-

ing to the rate of exchange referred to in this provision. If the contrary argument put forward by Westzucker and Dietz were correct, it would follow that the authorities in the State in which denaturing took place would have to purchase foreign currency at the variable daily rate. As a result, the statement given to the Fund by this State of the amount paid might exceed the maximum premium on which the award of the tender was based. In this instance the calculations contained in the statements laid before the national court by the Hoofdproduktschap show that the premium granted to Westzucker and Dietz would have amounted to 13·07 u.a. If the ceiling had been fixed at this figure, several tenders which had not been taken into consideration might have been accepted. In favour of its argument the Hoofdproduktschap again refers to Article 2(c) of Regulation No 2334/69.

Although Article 9(1)(a) of Regulation No 1987/69 provides that the premium must be expressed in the currency of the State awarding the tender, this is merely because, in all probability, the majority of the tenderers would be nationals of that State and would carry out the denaturing there. However, it cannot be concluded from this that the premium must also be expressed and paid in this currency by the State in which the denaturing takes place, where that State is different from the former. If the Community legislature had intended to make such rather unusual rules it would have had to make this clear, as was done in certain later regulations which are irrelevant in this instance.

The *Netherlands Government* maintains that the State by which the premium must be paid is bound to deal with all traders, whether nationals or aliens, on the same footing, that is, to pay them all in the national currency. Moreover, the national legislation prevents payment in foreign currency, as it is not legal tender. Moreover, no Community provision requires, nor can it require, a Member State to purchase foreign currency in order to pay a debt which is not incurred in that currency. The aim of the introduction of the unit of account is precisely to enable conversion into the national currency to be made in cases such as the present and to make traders bear the risk of the floating rates.

This concept agrees with Articles 1 and 2 of Regulation No 129 and is even more relevant inasmuch as that regulation, which dates from 1962, originally concerned national agricultural levies expressed in the national currency and levied on behalf of each Member State. As is shown by recent Community measures or communications this regulation still applies to conversions carried out by virtue of the Community provisions.

In this instance, the German authorities applied the official rate of exchange and not the daily rate when they reconverted into German currency the denaturing premium established in units of account applying to the quantities of sugar denatured to Dietz's order in Germany. It is not clear why the Netherlands authorities should be obliged to act differently.

Finally, therefore, the necessary reply is that the premium must be paid in the currency of the State which pays it and that any necessary conversion must be made in accordance with the provisions of Regulation No 129.

The *Commission* maintains that, in the absence of express Community provisions in this matter and in the light of certain indications provided by the so-called 'horizontal' regulations, it can fairly be admitted that the Community legislature has, first, left the solution of this problem to the Member States and, secondly, adopted as its basic concept that the States would overcome the difficulty by payment of the premium in the currency of the State in which denaturing is carried out.

As the premium cannot be regarded as providing any special benefit to the State from which the sugar comes, there is no reason to compel the State in which denaturing takes place to pay the premium in the currency of the former State.

The use of the currency of the denaturing State is also in accordance with the procedure adopted for the settlement of the accounts of the Fund (cf. Articles 10 and 11

of the Financial Regulation concerning this Fund).
When the State in which denaturing takes place pays the premium in its own currency, it is required by Article 2(1) of Regulation No 129 to apply in the conversion the fixed parity communicated to the International Monetary Fund and recognized by the latter as this parity is expressed for the purpose of the common agricultural policy through its relationship to the unit of account. The denaturing of sugar in fact constitutes an operation carried out in pursuance of the provisions concerning the common agricultural policy in which the amounts are expressed in units of account (cf., for example, Commission Decisions of 20 May, 3 June and 10 June 1970). Such rules are no doubt unfavourable to the operator where the daily rate of the currency in which the premium is granted is higher than the official parity but favourable in the converse case.

Grounds of judgment

1 By judgments of 6 July 1971 received at the Court Registry on 7 July 1971, the College van Beroep voor het Bedrijfsleven has submitted to the Court several questions concerning, in particular, the interpretation of Article 5(2)(e) and (f), the first indent of Article 9(1)(a), Article 9(3)(a) and Article 10 of Regulation (EEC) No 1987/69 of the Commission and of Article 11(1)(a) of Regulation (EEC) No 2061/69 of the Commission.

2 The file shows these questions to concern an action which arose from the fact that the Westzucker and Dietz undertakings which were declared by the German authorities to be the successful tenderers for certain quantities of sugar intended for denaturing, had this operation carried out in the Netherlands where the authorities issued them with denaturing premium certificates.

3 The undertakings in question consider that the Netherlands authorities were required to express the amount of the premium solely in German currency and, therefore, to fix it at a sum in Deutschmarks equal to that shown in the tenders which Westzucker and Dietz submitted to the German authorities and on the basis of which the latter awarded the tender.

Questions 2 and 3

4 Under the terms of the first subparagraph of Article 6(1) of Regulation No 2049/69: 'The denaturing premium shall be granted by the Member State on whose territory denaturing takes place'.

5 However, under the second subparagraph of the same paragraph: 'During the 1969/70 marketing year, ... the denaturing premium in respect of sugar coming

from one Member State intended for denaturing on the territory of another Member State may be granted' by the Member State from which the sugar comes.

6 As Article 16(1) of Regulation No 2061/69 refers to the situation in which 'A Member State ... using the authorization prescribed in the second subparagraph of Article 6(1) of Regulation (EEC) No 2049/69, has issued a denaturing premium certificate' it must be concluded that where the Member State in which denaturing has taken place is different from that in which the tender is invited, the successful tenderer may only require payment of the premium by the latter State if it makes use of this authorization.

7 At all events, the successful tenderer may only request payment of the premium from the State which has issued the certificate.

8 It is, therefore, appropriate to reply to the national court that where the State in which denaturing has taken place is different from that in which the tender is invited and where the certificate has been issued by the former State, it is alone liable to pay the premium.

Questions 1, 4, 5 and 6

9 Under the terms of Article 9(2) of basic Regulation No 1009/67 national intervention agencies — which are obliged to purchase the Community sugar which is offered to them and which are empowered to resell it in accordance with Articles 9(1) and 10(1) of the same regulation — 'may grant denaturing premiums for sugar rendered unfit for human consumption'.

10 Under the combined provisions of Article 10(1) of that regulation (as amended by Article 2 of Regulation No 1393/69) and Article 3 of Regulation No 447/68 (as amended by Regulation No 1395/69) this resale may take place 'by tender'.

11 Under the terms of Article 5(2)(e) and (f) of Regulation No 1987/69 any person wishing to accept the invitation to tender must indicate in the tender, in particular, 'the amount of the denaturing premium proposed, ... in the currency of the Member State in which the intervention agency issues the invitation' and 'in the case of denaturing, the Member State in which the sugar will be denatured'.

12 Article 10 of the regulation in question provides that the intervention agency concerned 'shall ... send a statement of award to the successful tenderers' which shall indicate in particular 'the amount of the denaturing premium' accepted for the quantity awarded.

13 Article 9(1)(a) of the same regulation provides that if the sugar is intended for animal feed: 'An award shall ... confer the right to the issue, in respect of the quantity awarded, of a denaturing premium certificate showing the denaturing premium specified in the tender'.

14 In accordance with Article 9(3) 'Where ... the sugar is denatured in a Member State other than the Member State which issued the invitation to tender, the Member State in which denaturing is effected:

(a) shall, at the request of the successful tenderer, issue the denaturing premium certificate for the quantity of sugar in question immediately on receipt of an attestation from the Member State which issued the invitation to tender;'

under paragraph (4) of the same article this attestation shall indicate in particular 'the amount of the denaturing premium'.

15 Under Article 10(2)(d) of Regulation No 2061/69 'the denaturing premium certificate shall indicate ... the denaturing premium fixed as the result of an award ...'.

16 Finally, under the terms of Article 11(1)(a) of the same regulation 'the issue of the denaturing premium certificate gives rise, as regards the quantity in question, to a right to payment, after denaturing has taken place, of the denaturing premium indicated in the certificate ...'.

17 Taken as a whole these provisions show that the amount of the premium shown in this certificate must correspond to the amount appearing in the tender made by the successful tenderer and referred to in the statement of award.

18 However, they do not in any way show that where the State in which denaturing has taken place is different from that in which the tender is invited, the former State is bound to express and to pay the premium in the currency of the latter State.

19 In fact, although Article 5 of Regulation No 1987/69 expressly provides that the amount of the proposed premium must be expressed in the tender in the currency of the State in which the invitation is issued, the provisions concerning the issue of the certificate and the payment of the premium are silent as regards the currency to be used for this purpose by the State in which denaturing has taken place.

20 There is thus no obligation for the State concerned to pay the premium in question in a foreign currency.

21 Moreover, this interpretation is by implication confirmed by Article 11(2) of the Financial Regulation concerning the European Agricultural Guidance and

Guarantee Fund of 5 February 1964 which provides that Member States which are creditors of the Fund 'shall ... receive a payment from the Commission made in their national currency'.

22 Hence, since the Member State which has advanced the denaturing premium may only request its repayment in its own currency, it cannot be obliged to have recourse to another currency when it fixes the amount of the premium due and pays it to the successful tenderer.

23 A negative reply must therefore be given to the first and fourth questions and, as regards the fifth question, it must be ruled that the denaturing premium may be paid in the currency of the Member State in which the denaturing has taken place.

24 If this Member State exercises its power to pay the premium in its national currency, it is bound to convert into this currency the amount of the premium awarded in the currency of the Member State inviting the tender.

25 To answer the sixth question it is necessary to consider whether this conversion must be carried out at the rate of exchange to be applied for the purposes of the common agricultural policy or at the current rate.

26 Under the terms of Article 2(1) of Regulation No 129 of 23 October 1962 'Where measures taken in pursuance of the instruments or provisions referred to in Article 1', that is to say, in particular, 'instruments concerning the common agricultural policy' (Article 1 of Regulation No 129, as amended by Article 1 of Regulation No 653/68 of the Council of 30 May 1968 (OJ L 123, p. 4, English Special Edition 1968(I), p. 121) 'require sums given in one currency to be expressed in another currency, the exchange rate to be applied shall be that which corresponds to the par value communicated to and recognized by the International Monetary Fund'.

27 Regulation No 1009/67 on 'the common organization of the market in sugar' and the provisions adopted on the basis of that regulation on the denaturing of sugar concern the common agricultural policy.

28 As a result, the provisions of Article 2(1) of Regulation No 129 apply to transactions to be carried out under Regulation No 1009/67 and the measures taken in implementation thereof.

29 Moreover, a note to paragraph 2(e) of Chapter III of the Notice of standing call for tender No 3/1970, which refers to Regulation No 1987/69 and within the framework of which the awards in dispute were made, expressly indicated the parities in units of account of the currencies of the Member States, and thus showed clearly

that any necessary conversion would take place at the rate of exchange referred to in Regulation No 129.

30 The reply to be given to the national court must therefore be that, in the cases in question, where the Member State in which denaturing has taken place pays in its own currency a premium which is expressed in the statement of award issued by the State in which the tender is invited in the currency of that State, the conversion must be effected at the rate of exchange provided for in Article 2(1) of Regulation No 129.

Costs

31 The costs incurred by the Government of the Kingdom of the Netherlands and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the parties to the main action and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 129 of the Council of 23 October 1962 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy, especially Article 2;
Having regard to Article 1 of Regulation (EEC) No 653/68 of the Council of 30 May 1968 on conditions for alterations to the value of the unit of account used for the common agricultural policy;
Having regard to the Financial Regulation concerning the European Agricultural Guidance and Guarantee Fund, adopted by the Council on 5 February 1964, especially Article 11;
Having regard to Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar, especially Articles 9 and 10;
Having regard to Regulation (EEC) No 447/68 of the Council of 9 April 1968

laying down general rules for intervention buying of sugar, especially Article 3;
Having regard to Regulation (EEC) No 1987/69 of the Commission of 8 October 1969 laying down detailed rules concerning the sale by tender of sugar by intervention agencies, especially Articles 3, 5, 9 and 10;
Having regard to Regulation (EEC) No 2049/69 of the Council of 17 October 1969 laying down general rules on the denaturing of sugar for animal feed, especially Article 6;
Having regard to Regulation (EEC) No 2061/69 of the Commission of 20 October 1969 laying down detailed rules on the denaturing of sugar for animal feed, in particular, Articles 10, 11 and 16;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, in particular Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by judgments of that court of 6 July 1971, hereby rules:

Questions 2 and 3:

1. **Article 5(2)(e) and (f), the first indent of Article 9(1)(a), Article 9(3)(a) and Article 10(2)(c) of Regulation (EEC) No 1987/69 of the Commission, and Article 11(1)(2) of Regulation (EEC) No 2061/69 of the Commission must be interpreted to mean that where the Member State in which denaturing has taken place is different from that in which the tender is invited and where the denaturing premium certificate has been issued by the former State, it is alone liable to pay the premium.**

Questions 1, 4, 5 and 6:

2. **These provisions must be interpreted to mean that in the abovementioned case:**

   (a) **the denaturing premium indicated in the certificate issued by the Member State in which denaturing has taken place must not be expressed in the currency of the Member State in which the tender is invited;**

   (b) **the Member State in which denaturing has taken place is not obliged to pay the premium in the currency of the Member State in which the tender is invited, but may pay it in its own currency.**

3. In the case referred to under 1. above, where the Member State in which denaturing has taken place pays in its own currency a premium which is expressed in the statement of award issued by the State in which the tender is invited in the currency of that State, the conversion must be effected at the rate of exchange provided for in Article 2(1) of Regulation No 129.

Lecourt Kutscher

Donner Trabucchi Monaco

Delivered in open court in Luxembourg on 26 January 1972.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE DELIVERED ON 15 DECEMBER 1971[1]

Mr President,
Members of the Court,

Before beginning to consider the specific questions involved in this case, I think it may perhaps be useful to recall briefly the Community system applying to the denaturing of sugar.
It is a very complicated system which results from numerous, sometimes obscure texts. It is, however, possible to sift a certain number of facts out of this 'jungle':

1. The common organization of the market in sugar obliges the national intervention agencies to obtain at the Community intervention price all the quantities of sugar which are offered to them.

2. In order to absorb the surpluses which this obligation may create the Community authorities have provided for two systems:

— an aid to exports to third countries by means of the grant of 'refunds',

— an arrangement intended to encourage the denaturing of sugar, in particular by transforming sugar for human consumption into products intended for animal feed.

3. The latter system involves numerous detailed rules, but the only one of interest to us in this instance is that known as the tender.
By means of a certain number of complex measures the Community authorities authorized the national intervention agencies to award tenders for denaturing certain quantities of sugar under certain conditions. This system in fact constitutes a sale to commercial organizations by a State intervention agency of quantities of sugar intended for denaturing; in the original

1 — Translated from the French.